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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 RICHARD ARTHUR KIRKHAM,

CASE NO. C24-1739 BHS

9 Petitioner,

ORDER

10 v.

11 DONNELL TANKSLEY,

12 Respondent.

13 THIS MATTER is before the Court on Magistrate Judge Grady J. Leupold's  
14 Report and Recommendation (R&R), Dkt. 13, recommending the Court dismiss without  
15 prejudice pro se petitioner Richard Kirkham's § 2241 habeas petition, and decline to  
16 issue a certificate of appealability. Kirkham is a pretrial detainee in Whatcom County. He  
17 contends that he has already suffered ineffective assistance of counsel and been denied  
18 his right to speedy trial.

19 The thorough R&R concludes that the Court should abstain from interfering with  
20 ongoing state criminal cases under *Younger v. Harris*, 401 U.S. 37 (1971). Dkt. 13 at 3–6  
21 (citing *Carden v. Montana*, 626 F.2d 82, 83 (9th Cir. 1980); and *Drury v. Cox*, 457 F.2d  
22 764,764–65 (9th Cir. 1972) (“only in the most unusual circumstances is a defendant

1 entitled to have federal interposition by way of injunction or habeas corpus until after the  
2 jury comes in, judgment has been appealed from and the case concluded in the state  
3 courts.”). It correctly concludes that Kirkham has not demonstrated that he is subject to  
4 irreparable harm and thus subject to a limited exception to *Younger* abstention, *id.* at 4,  
5 and that Kirkham can (and already has) raised his constitutional claims in the state  
6 criminal proceedings. *Id.* at 5.

7 Kirkham objects to the R&R, emphasizing that Whatcom County has refused to  
8 permit him to call his attorney, asserting that this a “case of first impression,” and that the  
9 “extraordinary circumstances of this case have not been seen in American jurisprudence.”  
10 Dkt. 14 at 4.

11 A district judge must determine de novo any part of a magistrate judge’s proposed  
12 disposition to which a party has properly objected. It must modify or set aside any portion  
13 of the order that is clearly erroneous or contrary to law. Fed. R. Civ. P. 72(a).

14 The district judge may accept, reject, or modify the recommended disposition;  
15 receive further evidence; or return the matter to the magistrate judge with instructions.  
16 Fed. R. Civ. P. 72(b)(3). A proper objection requires “specific written objections to the  
17 proposed findings and recommendations” in the R&R. Fed. R. Civ. P. 72(b)(2). “[I]n  
18 providing for a de novo determination . . . Congress intended to permit whatever reliance  
19 a district judge, in the exercise of sound judicial discretion, chose to place on a  
20 magistrate’s proposed findings and recommendations.” *United States v. Raddatz*, 447  
21 U.S. 667, 676 (1980) (internal quotation marks omitted). Accordingly, when a district  
22 court adopts a magistrate judge’s recommendation, the district court is required to merely

1 “indicate[] that it reviewed the record de novo, found no merit to . . . [the] objections, and  
2 summarily adopt[s] the magistrate judge’s analysis in [the] report and recommendation.”  
3 *United States v. Ramos*, 65 F.4th 427, 433 (9th Cir. 2023). In so doing, district courts are  
4 “not obligated to explicitly address [the] objections.” *Id.* at 437.

5 Kirkham has not persuaded the Court that the R&R is clearly erroneous or  
6 contrary to law. He has not established that this is the rare case where a federal court  
7 should intervene and correct or enjoin an unconstitutional state criminal proceeding. His  
8 objections are **OVERRULED**, the R&R is **ADOPTED** and Kirkham’s habeas petition is  
9 dismissed without prejudice. For the reasons outlined in the R&R, Kirkham has not  
10 shown that a reasonable jurist could disagree that the Court should abstain under  
11 *Younger*, and the Court will **NOT ISSUE** a 28 U.S.C. § 2254(c) certificate of  
12 appealability.

13 The Clerk shall enter a **JUDGMENT** and close the case.

14 **IT IS SO ORDERED.**

15 Dated this 31st day of March, 2025.

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18 BENJAMIN H. SETTLE  
19 United States District Judge  
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